

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

(1) LISA FERLAINO and
(2) JAMES FERLAINO,

Plaintiffs,

v.

(1) CROSSLAND HEAVY
CONTRACTORS, INC., and
(2) JOHN DOE,

Defendants.

(1) COMPSOURCE MUTUAL
INSURANCE CO.,

Intervenor.

Case No. CIV-20-939-C

PLAINTIFFS' FIRST AMENDED COMPLAINT

COME NOW, the Plaintiffs, Lisa Ferlaino and James Ferlaino (hereinafter collectively referred to as "Plaintiffs"), and for their cause of action against the Defendants, Crossland Heavy Contractors, Inc. and John Doe (hereinafter collectively referred to as "Defendants"), allege and state as follows:

1. That the Plaintiffs, Lisa Ferlaino and James Ferlaino, reside in Cleveland County, State of Oklahoma.
2. That the Defendant, John Doe, is believed to reside in Oklahoma County, State of Oklahoma.
3. That Defendant, Crossland Heavy Contractors, Inc. is a construction company which is based out of Columbus, Kansas.

4. That on August 20, 2018, Plaintiff, Lisa Ferlaino, was involved in an accident with Defendants, Crossland Heavy Contractors, Inc. and John Doe, at a construction site located in Edmond, Oklahoma.
5. That as a result, jurisdiction and venue are proper herein.
6. That at the time of the accident, John Doe was operating an excavator on behalf of Crossland Heavy Contractors, Inc.
7. That Plaintiff, Lisa Ferlaino, was operating a dump trailer attached to a tractor.
8. That John Doe was attempting to fill the dump trailer with materials when he negligently caused an injury to Plaintiff, Lisa Ferlaino.
9. That the accident referred to herein was the direct and proximate result of the negligence of the Defendants, Crossland Heavy Contractors, Inc. and John Doe, in that Defendants, Crossland Heavy Contractors, Inc. and John Doe:
 - (a) Failed to use reasonable care in the operation of the excavator;
 - (b) Failed to devote full time and attention to the use of the excavator;
 - (c) Failed to keep a proper lookout; and
 - (d) Failed to use the means at hand to avoid causing injury to Plaintiff, Lisa Ferlaino.
10. That as a result of the accident described herein, Plaintiff, Lisa Ferlaino, suffered personal injuries causing Plaintiff, Lisa Ferlaino, to seek medical treatment.

11. Plaintiff, Lisa Ferlaino, has experienced physical pain and mental anguish and will, in all reasonable probability, continue to do so in the future by reason of the nature of her injuries.
12. Plaintiff, Lisa Ferlaino, has been caused to incur medical charges, loss of earnings and expenses in the past and will continue to incur medical expenses and loss of earnings in the future for said injuries.
13. That Defendant, John Doe, was acting in the course and scope of his employment with Defendant, Crossland Heavy Contractors, Inc.
14. That as a result, Defendant, Crossland Heavy Contractors, Inc., are vicariously liable for the negligence of Defendant, John Doe, under the legal theory of *respondeat superior*.
15. Defendant, Crossland Heavy Contractors, Inc., negligently entrusted its equipment to Defendant, John Doe, who was an unfit employee.
16. That the Defendants, Crossland Heavy Contractors, Inc. and John Doe, engaged in conduct which was life-threatening to humans.
17. That Plaintiffs, Lisa Ferlaino and James Ferlaino, are entitled to exemplary or punitive damages for the sake of example and for the purpose of punishing the Defendants, Crossland Heavy Contractors, Inc. and John Doe, for their actions.

WHEREFORE, the Plaintiffs, Lisa Ferlaino and James Ferlaino, pray for judgment against the Defendants, Crossland Heavy Contractors, Inc. and John Doe, and for a total sum in excess of Seventy-Five Thousand and No/100 Dollars

(\$75,000.00), costs of this action and for such other and further relief as the Court deems just and proper.

Respectfully Submitted,

/s/Kenyatta R. Bethea

Kenyatta R. Bethea, OBA# 18650

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ATTORNEYS FOR PLAINTIFFS

LISA FERLAINO AND JAMES FERLAINO

CERTIFICATE OF SERVICE

This is to certify that on the 22nd day of December, 2020, I electronically transmitted the attached document to the Clerk of Court using the ECF System for filing and transmittal of a Notice of Electronic Filing to the following ECF registrants:

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CROSSLAND CONSTRUCTION

COMPANY, INC.

s/ Kenyatta R. Bethea

KENYATTA R. BETHEA

